

Taubman v Cohen

2017 NY Slip Op 33081(U)

March 30, 2017

Supreme Court, Rockland County

Docket Number: 031417/2016

Judge: Thomas E. Walsh II

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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ERIC TAUBMAN, WILLIAM MAYER AND FIRST NATIONAL
LAND DEVELOPMENT,

Plaintiff,

-against-

DECISION AND ORDER

Index No.031417/2016

(Motion #1)

ZOHAR COHEN A/K/A ZOHAR ABIKZER A/K/A ZOHAR
ABIKSER COHEN, THOMAS WILLIAMS, AND BRAFFITS
MOUNTAIN DEVELOPMENT CORP.

Defendant(s).

-----X
Thomas E. Walsh, II, J.S.C.

The following papers, numbered 1, were considered in connection with Plaintiff's motion for a Judgment of Default against the Defendant ZOHAR COHEN A/K/A ZOHAR ABIKZER a/k/a ZOHAR ABIKZER COHEN, pursuant to the Civil Practice Law and Rules section for a monetary Judgment in the amount of \$2,020,000.00 as well as the Declaratory Judgment all other relief demanded in the complaint:

PAPERS

NUMBERED

NOTICE OF MOTION/AFFIRMATION OF MICHAEL PREVITO, ESQ./ AFFIDAVIT OF ERIC TAUBMAN/EXHIBITS(1-14)	1
MEMORANDUM OF LAW IN SUPPORT OF DEFAULT JUDGMENT	2
AFFIRMATION OF REGINALD H. RUTISHAUSER, ESQ. IN OPPOSITION/ EXHIBITS (A-B)	3

Upon the foregoing papers, the Court now rules as follows:

This is an action to recover monies from a business venture between Plaintiffs and Defendant ZOHAR COHEN A/K/A ZOHAR ABIKZER A/K/A ZOHAR ABIKSER COHEN. According to Plaintiff TAUBMAN the venture began as a real estate investment for three commercial properties in exchange for monies and the forfeiture of an investment property of Plaintiffs in Tuxedo Park, New York. Plaintiff avers that the business venture then rolled into a development called Braffits Mountain in the State of Utah. Extensive litigation has occurred

in this matter in New Jersey, in Federal Court, in Nassau County Supreme Court and in the instant action in Rockland County Supreme Court. Plaintiffs request a declaratory judgment granting them fifty (50%) ownership rights of Cohen Braffits Estates Development, LLC (hereinafter CBED) and the underlying property and a monetary judgment in the amount of \$2,020,000.00.

The action was commenced against Defendant ZOHAR COHEN on October 15, 2015 by the filing of a Summons and Complaint in the County of Nassau (Index # 605266/15). The corporate Defendants were served through the Secretary of State of New York on August 24, 2015 pursuant to Business Corporation Law § 306 and Defendant WILLIAMS was served on August 31, 2015. Affidavits of service (included with the moving papers) indicate that the Summons with Notice was served upon Defendant ZOHAR COHEN on September 3, 2015 pursuant to Civil Practice Law and Rules § 308(4) (nail and mail). According to Plaintiff, a lawyer named George Cotz filed a Motion to Dismiss, which was originally rejected by the Clerk in Nassau County and was again filed on September 21, 2015.¹ Plaintiff's counsel avers that Defendant has not answered, moved, requested an extension of time, or otherwise responded to Plaintiff's pleading. The time to appear and answer, then, has expired [CPLR § 320(a)]. Therefore, the motion for default shall be granted.

The Court will further note that Plaintiff gave notice of the instant application to Defendant, and although there are affidavits of service provided attesting to the fact that all Defendant received such notice, no opposition was received.

Attorneys for the Defendant CBED oppose the default motion on the limited issue of any monetary or declaratory judgment because this is a multi-party litigation and the entry of judgment should be deferred until trial or following trial among the non-defaulting parties. Defendant CBED avers that the request that Plaintiff has made is prejudicial to them as they have appeared and answered and controverted material allegations of Plaintiff's complaint and

¹ Plaintiff's counsel indicates that the September 21, 2015 motion was "rejected," but it is unclear by whom. A motion that was rejected appears as Doc. #9 in the NYSCEF system, but there is no document to view and the status section states "Returned for Correction." The subsequent document (#10) is a Memorandum of Law in Support of the Motion to Dismiss and was filed September 21, 2015. Documents #5 through 7 in the NYSCEF system to have been deleted and state "error" under the status section.

have also raised counterclaims to which the granting of a monetary judgment or a declaratory judgment would effect. Specifically, Defendant CBED argues that Plaintiff's request is premature and improperly requests a declaratory judgment that the Plaintiffs own fifty percent (50%) of CBED or direct fifty percent (50%).

Pursuant to Civil Practice Law and Rules § 3125(d) where one party in a multi-party litigation has defaulted, the Court can defer the entry of judgment on liability and damages to until the time of or following the trial or other disposition of the action against the defendants who have answered. The default itself concedes liability, but not damages, which allows the defaulter the right to contest at the damages trial. Since the defaulting defendants may have a continuing interest in the case despite their default, they must be notified about the default order pursuant to Civil Practice Law and Rules § 3125(d). However, since the party defaulted service cannot be made by mailing the order, and must be served on the defaulter in the same manner as a summons. Nonetheless, the statute allows the court to relieve the plaintiff of that obligation and direct the manner of service.

Based on the foregoing, Plaintiff's motion for default against Defendant ZOHAR COHEN A/K/A ZOHAR ABIKZER A/K/A ZOHAR ABIKSER COHEN is granted as to the default and deferred as to the monetary judgment and declaratory judgment. The issue of damages will be deferred to the time of trial between the non-defaulting Defendants and the Plaintiff. Plaintiff is directed to serve Defendant ZOHAR COHEN A/K/A ZOHAR ABIKZER A/K/A ZOHAR ABIKSER COHEN with the instant Decision and Order of this Court pursuant to Civil Practice Law and Rules § 308(1), (2) or (4) at all known addresses for the Defendant.

Accordingly, it is hereby

ORDERED that Plaintiff's Notice of Motion for an Order pursuant to CPLR § 3215 is granted in part and denied in part; and it is further

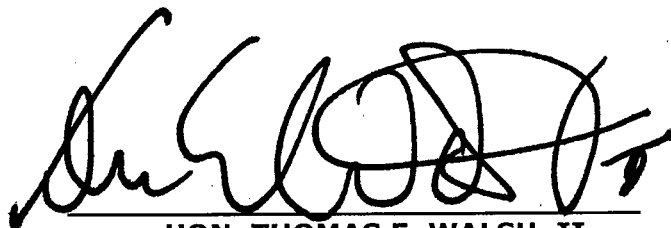
ORDERED that the determination of the amount of damages and a declaratory judgment are deferred until the time of trial between the Plaintiffs and the non-defaulting Defendants; and it is further

ORDERED that Plaintiff shall serve Defendant ZOHAR COHEN A/K/A ZOHAR ABIKZER A/K/A ZOHAR ABIKSER COHEN with the instant Decision and Order pursuant to Civil

Practice Law and Rules § 308(1), (2) or (4). Plaintiff is to provide the Court with Affidavits of service for same and the certified receipt cards may be e-filed through the NYSCEF system within ten (10) days of service.

The foregoing constitutes the Decision and Order of this Court on Motion #1.

Dated: New City, New York
March 30, 2017



HON. THOMAS E. WALSH, II
Justice of the Supreme Court

To:

MICHAEL PREVITO, ESQ.
Attorney for Plaintiff
(via e-file)

KANTROWITZ GOLDHAMMER and GRAIFMAN
Attorney for CBED
(via e-file)

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RIKER, DANZIG, SHERE
(via e-file)